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DISTRICT IV

October 6, 2022

To:

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Circuit Court Judge
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
Electronic Notice

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Nigel R. Schultz 632854
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You are hereby notified that the Court has entered the following opinion and order:

2021AP70-CRNM State of Wisconsin v. Nigel R. Schultz (L.C. # 2018CF375)

Before Kloppenburg, Fitzpatrick, and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Nigel Schultz appeals a judgment convicting him of one count of first-degree intentional homicide. Attorney Leonard Kachinski has filed a no-merit report seeking to withdraw as appellate counsel. *See* WIS. STAT. RULE 809.32 (2019-20);¹ *see also Anders v. California*, 386 U.S. 738, 744 (1967). Counsel provided Schultz with a copy of the no-merit report, Schultz filed a response, and counsel filed a supplemental no-merit report. We conclude that this case is

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. After our independent review of the record, the no-merit report, the response, and the supplemental report, we conclude that there is no arguable merit to any issue that could be raised on appeal.

Schultz was charged with first-degree intentional homicide, hiding a corpse, theft from a corpse, and two counts of possession of a firearm by a felon. Schultz pled no contest to first-degree intentional homicide pursuant to a negotiated plea agreement, the terms of which were recited in open court. In exchange for Schultz's plea, the State agreed to dismiss and read in the remaining counts. The circuit court accepted Schultz's plea and imposed a life sentence.

The no-merit report addresses whether Schultz's plea was knowingly, intelligently, and voluntarily entered. Our independent review of the record reveals that the plea colloquy sufficiently complied with the requirements of *State v. Bangert*, 131 Wis. 2d 246, 255-73, 389 N.W.2d 12 (1986), and WIS. STAT. § 971.08 relating to the nature of the charge, Schultz's understanding of the proceedings and the voluntariness of the plea decision, the potential penalties, including a mandatory life sentence and other direct consequences of the plea, and the constitutional rights being waived. The record also establishes that the circuit court ascertained on the record a factual basis for the plea. The record shows no other ground to withdraw the plea. There is no arguable merit to this issue.

The no-merit report also addresses whether the circuit court erroneously exercised its sentencing discretion. Pursuant to WIS. STAT. § 939.50(3)(a), the court sentenced Schultz to a mandatory life sentence. The only issue at the sentencing hearing was whether Schultz would be eligible to petition for extended supervision and, if so, on what date. *See* WIS. STAT. § 973.014. The State recommended that the court not allow any release for the remainder of Schultz's life.

Schultz's trial counsel requested that Schultz be made eligible for extended supervision twenty-five years from the date of sentencing. The court ultimately followed the State's recommendation that Schultz not be eligible for release to extended supervision. There is a strong public policy against interfering with the circuit court's sentencing discretion, and sentences are afforded the presumption that the circuit court acted reasonably. See *State v. Echols*, 175 Wis. 2d 653, 681-82, 499 N.W.2d 631 (1993). The standards for the circuit court and this court on discretionary sentencing issues are well established and need not be repeated here. See *State v. Gallion*, 2004 WI 42, ¶¶17-51, 270 Wis. 2d 535, 678 N.W.2d 197. In this case, the circuit court considered appropriate factors, did not consider improper factors, and reached a reasonable result. Any argument that the circuit court erroneously exercised its sentencing discretion is without arguable merit on appeal.

The no-merit report discusses whether there would have been any basis for a motion to suppress related to the searches of two residences and a vehicle, conducted by law enforcement pursuant to a search warrant. The record reveals that no suppression motion was filed in this case. Therefore, any challenge to the warrant authorizing the searches would need to be raised within the context of a claim that trial counsel was ineffective for failing to pursue a suppression motion. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that such performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Here, Schultz cannot establish deficient performance because any suppression motion challenging the warrant would have been frivolous, as the record contains ample facts to establish a finding of probable cause to support the issuance of the warrant. See *State v. DeSmidt*, 155 Wis. 2d 119, 131, 454 N.W.2d 780 (1990) ("search warrant may only issue on the basis of a finding of probable cause").

Searches of a residence at N901 Redwing Road in the Township of Emmet, Dodge County, as well the residence and van of Schultz's girlfriend were conducted by law enforcement pursuant to a warrant that was issued by a judge in the early morning hours of November 1, 2018. The prior evening, the Dodge County Dispatch Center received a call from an individual, T.L.S., advising them that there could be a body on his property. T.L.S. also reported that his daughter had informed him that the person responsible for the homicide was Schultz. Law enforcement officers traveled to the described location near N901 Redwing Road and observed what looked like blood and a piece of human skull.

At approximately 6:25 p.m. on October 31, 2018, Captain Chad Enright of the Dodge County Sheriff's Department received a page advising him that deputies were responding to a report of a dead body at N901 Redwing Road. Enright learned that Schultz was a possible suspect in connection with the homicide investigation, that Schultz had an extensive criminal history including an active felony arrest warrant, and that Schultz was believed to be traveling in a van registered to his girlfriend. Enright met up with a Beaver Dam police officer and went to the residence of Schultz's girlfriend. Enright knocked on the door and stated that he wanted to talk with Schultz. Schultz's girlfriend said Schultz was not there. Schultz eventually came out of the residence and acknowledged that he had an arrest warrant. Schultz was transported to the Beaver Dam Police Department for interviewing. During the transport, Schultz stated that he wanted to make a deal in return for information about a dead body.

At the police department, Schultz was given and waived his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Schultz was interviewed by Detective Michael Willmann and another officer. Schultz told the officers that he knew about the homicide and gave the victim's name. Schultz claimed that, located in his jacket at his girlfriend's apartment, he had one of the

casings that was used to shoot the victim. Schultz stated that T.L.S. shot and buried the victim. Schultz also admitted that he took the victim's photo identification cards, food share cards, and phone. Schultz was detained after the interview, and Detective Willmann applied for a warrant to search the property at N901 Redwing Road, as well as the residence and van of Schultz's girlfriend.

In light of all of the above, we are satisfied that the warrant-issuing judge "had a substantial basis for concluding that the probable cause existed." *State v. Higginbotham*, 162 Wis. 2d 978, 989, 471 N.W.2d 24 (1991). Any challenge to the search warrant would have been meritless and, therefore, trial counsel cannot be said to have been ineffective for failing to raise such a challenge. *See State v. Cummings*, 199 Wis. 2d 721, 747 n.10, 546 N.W.2d 406 (1996) ("It is well-established that an attorney's failure to pursue a meritless motion does not constitute deficient performance.").

The no-merit report and response also discuss whether there would be any arguable merit to challenging Schultz's statements to law enforcement, including his eventual confession that he, and not T.L.S., was the one who shot the victim. Schultz asserts in his response to the no-merit report that his confession was false and that "it would be reasonable to believe that he provided the alleged confession to protect ... individuals from incarceration." The criminal complaint states that Schultz was read and waived his *Miranda* rights prior to his confession. Schultz does not dispute that he was read his *Miranda* rights and that he waived them. He does not allege any conduct by law enforcement or anyone else that would have rendered his statements involuntary, nor does he allege any facts that would suggest his waiver of the rights to silence and to counsel was not knowingly and intelligently made. There is nothing in the record,

counsel's no-merit reports, or Schultz's response that would provide a basis to suppress Schultz's statements to police.

Our independent review of the record discloses no other potential issues for appeal.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Leonard Kachinsky is relieved of further representation of Nigel Schultz in this case pursuant to WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals